



## Virginia Workers' Compensation Commission

333 E. Franklin St., Richmond, Virginia 23219

Phone: 1-877-664-2566

Website: <http://www.workcomp.virginia.gov>

WebFile: <https://webfile.workcomp.virginia.gov>

# Vocational Rehabilitation Guidelines

## Effective October 1, 2015

The Virginia Workers' Compensation Commission has issued these guidelines for vocational rehabilitation with the hope that the guidelines will provide better understanding between the parties, facilitate appropriate vocational rehabilitation, and eliminate needless conflict and litigation.

Neither the Virginia Workers' Compensation Act nor the regulations of the Commission have any provisions regarding the licensure or certification of rehabilitation counselors. Therefore, the Commission does no regulation on this point. Reference should be made to the provisions of Title 54.1 referenced in Section 65.2-603(A)(3) of the Workers' Compensation Act.

### **I. THE VOCATIONAL REHABILITATION PROCESS**

Vocational rehabilitation services may only be provided by rehabilitation providers certified in accordance with Va. Code § 54.1-3510 *et seq.* Certified Rehabilitation Providers must comply with the Regulations Governing the Certification of Rehabilitation Providers, 18 VAC 115-40-10 *et seq.*, Part V Standards of Practice, or by rehabilitation providers certified in accordance with the laws of the state where the vocational rehabilitation services are provided.

- A. Vocational rehabilitation services, including vocational evaluation, counseling, job coaching, job development, job placement, on-the-job training, education, and retraining, shall take into account the employee's pre-injury job and wage classification; age, aptitude and level of education; the likelihood of success in the new vocation; and the relative costs and benefits of such services. Retraining should be considered if job placement efforts are not successful, or the employee's transferable skills are not readily marketable.

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- B. The provider should not ask the employee to engage in job development, job placement or on-the-job training until he/she is medically released for work. However, the provider may require the employee to meet in order to assess the employee's potential for work, and to prepare résumés and to schedule other appropriate actions, such as attending job preparation training, in anticipation of employment.
- C. The two goals of vocational rehabilitation are to restore the employee to gainful employment, and to relieve the employer's burden of future compensation. Rehabilitation providers should attempt to find employment within the employee's medical restrictions consistent with the employee's pre-injury position and salary level, and the provider should take into account such factors as distance, transportation costs, and actual anticipated earnings from the potential job, when considering such alternative employment.
- D. It is the rehabilitation provider's responsibility to assess employment opportunities by direct contact with potential employers when possible or through research in the labor market as to how the job is commonly performed in the local economy. The assessment should determine whether a suitable position is presently available that is within the employee's restrictions and for which the employee is qualified. The provider shall not send the employee to apply or interview for positions not suitable for the employee with or without reasonable accommodation, but the provider may ask the employee to develop résumés and to attend job preparation training as well as job fairs. The provider may ask the employee to attend interviews for present employment opportunities where the treating physician anticipates that the employee will be released to such work within a reasonably brief period.
- E. Telemarketing and commission sales positions are only appropriate job placement, when the employee has demonstrated aptitude or ability in this line of work. Interviews with sheltered workshops and selective employers who are subsidized by employers/carriers are inappropriate, if they do not provide the potential for legitimate rehabilitation, such as

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learning work skills or restoring the employee to a productive place in the labor market.

- F. It is the responsibility of the provider to assist the employee in all aspects of the vocational rehabilitation process such as appropriate presentation, interviewing skills, discussion of limitations with employers, and other employability factors. The employee will be counseled in accordance with the Standards of Practice for Certified Rehabilitation Providers, 18 VAC 115-40-40. Requiring employees to look in newspapers, contact a specific number of potential employers per week, check listings at the VEC, or register with agencies for short-term jobs does not constitute appropriate "vocational rehabilitation."
- G. Rehabilitation providers may not advise the employee to withhold information about his/her injury or job capabilities during job interviews or on applications. However the employee may not discuss them in such a way as to sabotage the interview or application process. Any discussion should be limited to the question of whether the employee can perform the job(s) at issue with or without reasonable accommodation.
- H. Employees are not required to give rehabilitation providers personal or financial information, such as number of children, spouse's employment, or credit history, unless such information relates to a bona fide occupational qualification for employment. An employee is required to disclose whether he/she is legally eligible for employment, including their Social Security number, has a valid driver's license, or has been convicted of a felony or a misdemeanor, and to provide his/her previous employment history.

## **II. MEETINGS BETWEEN EMPLOYEES AND PROVIDERS**

- A. Meetings should be held at reasonable times and places for both the employee and provider. Employees are not required to invite rehabilitation providers onto their property or into their homes. Also, just as the employee must cooperate with reasonable demands of the rehabilitation provider that are likely to return him/her to gainful employment, the provider must make
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reasonable accommodation for the employee's personal life, such as medical conditions and transportation problems.

- B. Routine telephone contact should be made between 9:00 a.m. and 6:00 p.m. No calls should be made before 7:00 a.m. or after 10:00 p.m. except in cases of emergency.
- C. The provider should give the employee advance notice, in writing or by phone, of meetings between the rehabilitation provider and employee, and of employment interviews. A minimum of two calendar days' notice of any meeting or employment interview is suggested, except for exceptional situations.
- D. Prior to being released to selective employment, the employee does not have to seek employment. However, the employee must meet with the provider for the purpose of a vocational assessment.

### **III. ROLE OF EMPLOYEE'S ATTORNEY**

- A. Employees have the right to have their attorney present at the initial rehabilitation meeting. However, an attorney may not delay such a meeting for more than *10 business days* after initial contact by the rehabilitation provider with the employee's attorney.
- B. An employee may consult with his/her attorney at any time. Actions of the attorney will be imputed to the employee for the purposes of considering whether the employee is cooperating.

### **IV. MEDICAL ASPECTS OF VOCATIONAL REHABILITATION**

- A. As the vocational rehabilitation provider's role is limited to providing vocational rehabilitation, the provider is prohibited from medically managing the employee's treatment in any way, even if requested by the physician.
  - B. Monitoring treatment is not medical management. Determining return to work status is part of the rehabilitation process intended to enhance communication between all parties involved
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in the rehabilitation process. With the consent of the physician, the provider may meet with the doctor outside of the employee's presence. The employee is not required to sign a consent granting the provider access to the physicians. If the physician does not wish to communicate with the provider, information will have to be obtained by other means provided or permitted by law.

- C. The employee has the right to a private examination by and consultation with the medical provider without the presence of any certified rehabilitation provider and/or nurse or case manager.
- D. In order to determine the work capacity of the employee, the provider may require the employee to submit to a functional evaluation, if approved and authorized by the employee's treating physician or an independent medical examiner.

### **V. TRANSPORTATION AND OTHER COSTS**

- A. The employee is entitled to reimbursement for expenses incurred in rehabilitation efforts. This includes mileage costs for trips to rehabilitation meetings, obtaining or returning applications, attending interviews, and other travel at the direction of the provider. Costs incurred for telephone calls, photocopying, postage, and obtaining DMV and other records are also reimbursable, if such are requested by the rehabilitation provider or a potential employer.
- B. If the claimant does not have access to transportation, it is the responsibility of the employee to notify the vocational rehabilitation provider. The vocational rehabilitation provider should contact the carrier regarding the issue and make appropriate arrangements as directed/approved by the carrier to insure the employee's attendance at meetings and interviews. This may include the carrier forwarding mileage payments in advance or arranging appropriate alternative transportation. The employee must provide information explaining why transportation is/is not available.